M

Roneo. IX-27—100,000—21-5-42.

~~Legal~~ Home (1949) Department.

MS SERIES. D.16[illegible]

G.O. No. 437

Dated 1-1-49

[Despatch Abstract.]

ACT: THE MADRAS ALIYASANTANA ACT 1949 : ACT IX OF 1949 : LEGISLATION :

PAPERS : RECORDED.

LEGAL DEPARTMENT

G.O. No. 77, 25th April 1949

Acts—The Madras Aliyasantana Act, 1949—Publication ordered as Madras Act IX of 1949.

Order—No. 77, Legal, dated 25th April 1949.

The Madras Aliyasantana Act, 1949, will be published in the *Fort St. George Gazette* in English and in the Tamil, Malayalam, Kannada and Hindustani languages as Madras Act IX of 1949.

(By order of His Excellency the Governor)

K. V. RAJAGOPALAN,
Secretary to Government.

To the Superintendent, Government Press.
" Senior Translator to Government.
" Home Department.
" Secretary, Madras Legislature.
" Private Secretary to His Excellency the Governor.

APPENDIX.

The following Act of the Madras Legislature received the assent of His Excellency the Governor-General on the 13th April 1949, and is hereby published for general information :—

ACT No. IX OF 1949.

An Act to define and amend in certain respects the law relating to marriage, maintenance, guardianship, intestate succession, family management and partition applicable to persons governed by the Aliyasantana Law of Inheritance.

WHEREAS it is expedient to define and amend in certain respects the law relating to marriage, maintenance, guardianship, intestate succession, family management and partition applicable to persons governed by the Aliyasantana Law of Inheritance ; It is hereby enacted as follows :—

CHAPTER I.

Preliminary.

1. (1) This Act may be called the Madras Aliyasantana Act, 1949. Short title, application and commencement.

(2) It shall apply—

(*a*) to all Hindus and Jains who are governed by the Aliyasantana Law of Inheritance and

(*b*) to all Hindu and Jain males, whether governed by the said law or not, who have contracted or may contract marital alliances with Hindu and Jain females governed by the said law :

Provided that the provisions of Chapter IV shall not apply to Jains.

(3) It shall come into force at once.

Repeal of Madras Acts IV of 1896 and III of 1929.

2. The Malabar Marriage Act, 1896, in so far as it has not been already repealed, and section 6 of the Jaina Succession Act, 1928, are hereby repealed.

Madras Act IV of 189[illegible]
Madras III of 192[illegible]

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context—

(*a*) " Aliyasantana " means the system of inheritance in which descent is traced in the female line, but does not include the system of inheritance known as the Marumakkattayam ;

(*b*) (i) " kavaru " used in relation to a female, means the group of persons consisting of that female, her children and all her descendants in the female line ;

(ii) " kavaru ", used in relation to a male, means the kavaru of the mother of that male ;

(*c*) " kutumba " means the group of persons forming a joint family with community of property governed by the Aliyasantana Law of Inheritance ;

(*d*) " major " means a person who has completed the age of eighteen years ;

(*e*) " minor " means a person who has not completed the age of eighteen years ;

(*f*) " nissanthathi kavaru " means a kavaru which is not a santhathi kavaru ;

(*g*) " prescribed " means prescribed by rules made under this Act ;

(*h*) " santhathi kavaru " means a kavaru of which at least one member is a female who has not completed the age of fifty years ;

(*i*) " Yajaman " means the oldest member, male or female, of a kutumba or kavaru, as the case may be, in whom the right to manage its properties vests, or any other member or members in whom such right is vested by family custom, contract, decree of court or otherwise.

CHAPTER II.

Marriage and its Dissolution.

Marriages valid under the Act.

4. (1) Save as provided in section 5, the conjugal union of an Aliyasantana female with—

(i) a male belonging to the same community as such female, or

(ii) a male not belonging to such community and whether governed by the Aliyasantana Law or not, but being a Hindu or Jain,

shall be deemed for all purposes to be a legal marriage, if—

(*a*) the parties to the union are not related to each other in such degree of consanguinity or affinity that conjugal union between them is prohibited by any custom or usage of the community to which they belong ; and

(*b*) the union—

(i) was before the date on which this Act comes into force openly solemnized in accordance with the customary ceremonies prevailing in the community to which the parties belong or recognized by the community as a valid marriage ; or

(ii) is openly solemnized on or after the date aforesaid and, where either or both the parties are minors, with the consent of the guardian or guardians of such minor or minors ; or

(iii) was registered as a marriage under the Malabar Marriage Act, 1896, before the date aforesaid.

Madras Act IV of 1896.

(2) A conjugal union between minors or between a minor and a major which would otherwise be a valid marriage under sub-section (1) shall not be deemed to be invalid merely on the ground that the consent of the guardians or guardian of such minors or minor was not obtained to the union.

(3) Notice of every marriage contracted on or after the date on which this Act comes into force shall be given by such person, to such authority, in such form, and within such time, as may be prescribed. Failure to give such notice shall be punishable with fine which may extend to fifty rupees but such failure shall not invalidate the marriage or affect the legal rights of the parties to, or the issue of, such marriage.

Marriage during continuance of prior marriage void.

5. During the continuance of a prior marriage which is valid under section 4, any marriage contracted by either of the parties thereto on or after the date on which this Act comes into force shall be void.

Dissolution of marriage.

6. A marriage which is valid under section 4 may be dissolved on or after the date on which this Act comes into force—

(*a*) by a registered instrument of dissolution executed by the parties thereto ; or

(*b*) by an order of dissolution as hereinafter provided :

Provided that if either or both the parties is or are minors, the marriage shall not be dissolved until after the party has become a major or both the parties have become majors, as the case may be.

Nothing contained in this section shall be deemed to invalidate any dissolution of the marriage effected before the date on which this Act comes into force in accordance with the custom prevailing in the community to which the parties belong.

Rights of children of marriage, etc., not affected by dissolution of marriage.

7. The dissolution of a marriage which is valid under section 4, whether by death or otherwise and whether before or after the commencement of this Act, shall not affect in any way the legal status or rights under this Act of the children of such marriage or of their descendants.

Petition for dissolution.

8. (1) A husband or wife may present a petition for dissolution of the marriage—

(*a*) if the place—

(i) where the marriage was contracted, or

(ii) where the respondent or petitioner at the time of the marriage, had a permanent dwelling or actually and voluntarily resided or carried on business or personally worked for gain, or

(iii) where the respondent or petitioner at the time when the petition is presented has a permanent dwelling or actually and voluntarily resides or carries on business or personally works for gain,

is situated within the local limits of the jurisdiction of the Court of a District Munsif, in any such Court ;

(*b*) if such place is not situated within the local limits of the jurisdiction of the Court of any District Munsif, in the Court of the Subordinate Judge, or if there is no such Court, in the Court of the District Judge, within the local limits of whose jurisdiction such place is situated ; and

(*c*) if such place is situated within the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Madras, in the Madras City Civil Court.

(2) The petition shall specify the place where, and the date on which, the marriage was contracted and if the respondent was a minor at the time of the marriage, the name and address of the guardian, if any, with whose consent the marriage was contracted.

9. A copy of such petition shall be served on the respondent at the cost of the petitioner. Notice of petition.

10. (1) On the motion of the petitioner made not earlier than six months, and not later than one year, after the service of the copy of the petition aforesaid, if the petition is not withdrawn in the meantime, the Court shall, on being satisfied after such inquiry as it thinks fit that a marriage which is valid under section 4 was contracted between the parties, by order in writing, declare the marriage dissolved. Order of dissolution of marriage.

(2) The dissolution shall take effect from the date of the order.

Central Act V of 1908.

11. The provisions of the Code of Civil Procedure, 1908, shall, so far as may be, apply to petitions under this Chapter. Application of Civil Procedure Code to petitions.

12. No Court shall entertain a suit for restitution of conjugal rights between the parties to a marriage which is valid under section 4. Bar of suit for restitution of conjugal rights.

CHAPTER III.

Maintenance and Guardianship.

13. (1) The wife, and minor children other than married daughters, shall be entitled to be maintained by the husband or the father, as the case may be : Maintenance of wife and minor children.

Provided that the wife shall not be entitled to maintenance from her husband, if she refuses to live with him without just cause.

(2) Nothing contained in sub-section (1) shall affect the right of any person to maintenance from his or her kutumba or kavaru properties.

(3) In awarding maintenance under sub-section (1), the Court shall have due regard to the means and circumstances of the person against and by whom maintenance is claimed and to the reasonable wants of the person claiming maintenance.

14. The husband shall be the guardian of his minor wife in respect of her person and property ; and subject to the provisions of section 15, the father shall be the guardian of his minor children other than married daughters, in respect of their person and property : Guardianship of minor wife and children.

Provided that such guardianship shall not extend to the right and interest of the wife or children in respect of their kutumba or kavaru properties :

Provided further that the custody of a minor child who has not completed the age of three years shall ordinarily be with the mother.

Mother to be guardian of minor children if father is dead or marriage is dissolved.

15. The mother shall be the guardian of the person and property of her minor children if the father is dead or her marriage with him has been dissolved.

Saving.

16. Nothing contained in sections 14 and 15 shall be deemed to affect the operation of the Guardians and Wards Act, 1890. Central Act VIII of 1890

CHAPTER IV

Intestate Succession.

Property as to which a person is deemed to die intestate.

17. A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Devolution of property left by Aliyasantana male intestate.

18. On the death intestate of an Aliyasantana male, his property, which is self-acquired or separate, shall devolve in the order and according to the rules contained in sections 19, 20, 21, 22, 23 and 24.

Devolution where intestate has left lineal descendant.

19. (1) Where the intestate has left surviving him any lineal descendant or descendants and also his mother or a widow or widows or both his mother and a widow or widows, the whole of the property shall devolve on them.

(2) In the absence of the mother and any widow, the whole of the property shall devolve on the lineal descendant or descendants.

Rules of distribution in such cases.

20. The distribution of the property among the heirs referred to in section 19 shall be made in accordance with the following rules :—

(i) The widow, or if there is more than one widow, each of the widows, shall be entitled to a share equal to that of a child.

(ii) The mother shall be entitled to a share equal to that of a child.

(iii) (*a*) Each child (son or daughter) shall be entitled to an equal share.

(*b*) Where a child has predeceased the intestate, the lineal descendants of such child shall, subject to the provisions of clause (vi), be entitled to the share which the child would have taken, had he or she survived the intestate.

(iv) (*a*) Grandchildren of the intestate by a deceased child shall be entitled in equal shares to what the deceased child would have taken, had he or she survived the intestate.

(*b*) Where any such grandchild has predeceased the intestate, the lineal descendants of such grandchild shall, subject to the provisions of clause (vi), be entitled to the share which the grandchild would have taken, had he or she survived the intestate.

(v) The property shall devolve in like manner on the remoter surviving lineal descendants of the intestate.

(vi) The descendants of a child, grandchild or other lineal descendant of the intestate shall not be entitled to any share in his property if such child, grandchild or other descendant is alive at the time of the death of the intestate.

Illustrations.

(1) Z dies intestate leaving two widows A and B, his mother C, a son D, and a daughter E, a granddaughter F by such daughter, the lineal descendants of a deceased daughter G, and the lineal descendants of a deceased son H.

A, B, C, D and E will each get one-seventh of the property; the lineal descendants of G will get one-seventh; the lineal descendants of H will also get one-seventh. The granddaughter F will not get any share.

(2) Z dies intestate leaving no mother or widow, but leaving a son A, a daughter B, a grandson E and a granddaughter F by a deceased daughter C, a granddaughter G by a deceased son D and two great granddaughters, H and J, by a deceased daughter of D.

A and B will each be entitled to one-fourth of the property; E and F will each be entitled to one-eighth; G will be entitled to one-eighth; H and J will each be entitled to one-sixteenth.

(3) Z dies intestate leaving no mother, widow or child, but leaving three grandchildren A, B and C by a daughter X who has predeceased him and two grandchildren D and E by a son Y who has also predeceased him. A, B and C will each be entitled to one-sixth of Z's property and D and E to one-fourth each.

Devolution where intestate has left no lineal descendant but has left his mother.

21. Where the intestate has not left surviving him any lineal descendant but has left his mother and a widow or widows, one-half of the property shall devolve on his mother and the other half on his widow or widows in equal shares. In the absence of a widow, the whole of the property shall devolve on the mother.

Devolution where intestate has left only mother's kavaru or widow or both.

22. (1) Where the intestate has not left surviving him any lineal descendant or his mother but has left his mother's kavaru and a widow or widows, one-half of the property shall devolve on his mother's kavaru and the other half on his widow or widows in equal shares.

(2) In the absence of the mother's kavaru, the whole of the property shall devolve on the widow or widows in equal shares; and in the absence of any widow, the whole of the property shall devolve on the mother's kavaru.

Devolution where intestate has left only father or maternal grand-mother's kavaru or both.

23. (1) Where the intestate has not left surviving him any of the heirs mentioned in sections 19, 21 and 22 but has left his father and his maternal grandmother's kavaru, one-half of the property shall devolve on his father and the other half on his maternal grandmother's kavaru

(2) In the absence of the maternal grandmother's kavaru, the whole of the property shall devolve on the father ; and in the absence of the father, the whole of the property shall devolve on the maternal grandmother's kavaru.

Devolution in other cases.

24. Where the intestate has not left surviving him any of the heirs mentioned in sections 19, 21, 22 and 23, the whole of the property shall devolve on the kavaru of his mother's maternal grandmother or other female ascendant in the female line, the nearer excluding the more remote.

Devolution of property left by Aliya-santana female intestate.

25. On the death intestate of an Aliyasantana female, her property which is self-acquired or separate shall devolve as follows :—

(1) The whole of the property shall devolve on her lineal descendants, distribution among such descendants being made in accordance with the rules laid down in section 20, clauses (iii) to (vi).

(2) (*a*) In the absence of such descendants, one-half of the property shall devolve on the kavaru of the intestate's mother and the other half on her husband.

(*b*) In the absence of her mother's kavaru, the whole of the property shall devolve on her husband ; and in the absence of her husband, the whole of the property shall devolve on her mother's kavaru.

(3) In the absence of any of the relatives aforesaid, the property shall devolve on the kavaru of the maternal grandmother or other female ascendant of the intestate, the nearer excluding the more remote.

Devolution of property left by non-Aliyasantana male intestate.

26. (1) On the death intestate of a male not governed by the Aliyasantana law—

(i) who—

(*a*) has, before the date on which this Act comes into force, contracted a marriage with an Aliyasantana female which is valid under section 4 ; or

(*b*) has contracted on or after such date a marriage with an Aliyasantana female which is valid under that section ; and

(ii) who has left surviving him by such marriage or marriages one or more of the following relations, namely :—

(*a*) a widow or widows,

(*b*) children,

(*c*) lineal descendants,

such relation or relations shall be entitled, if the intestate has also left relations who are heirs according to the personal law by which he is governed, to one-half of his property which is separate or self-acquired and if the intestate has left no such heirs, to the whole of such property :

Provided that the reasonable funeral expenses of the intestate shall first be deducted from such separate or self-acquired property.

(2) The property devolving on the relations referred to in sub-clauses (*a*), (*b*) and (*c*) of clause (ii) of sub-section (1) shall be distributed among them in accordance with the rules contained in clauses (i), (iii), (iv), (v) and (vi) of section 20.

Possession and management of property until division is effected.

27. (1) Where the whole of the property of any male or female intestate devolves under the foregoing provisions of this Chapter on any kavaru as such, the yajaman of the kavaru shall be entitled to the possession and management of such property until division thereof is effected.

(2) In all other cases, the oldest among the heirs of such intestate (including all the members of any kavaru on whom any portion of the property may have devolved) shall be entitled to the possession and management of such property until division thereof is effected.

CHAPTER V.

Kutumba and its Management.

Yajaman to keep accounts and allow inspection, etc.

28. (1) The yajaman shall keep true and correct accounts of the income and expenditure of the kutumba ; and every major member of the kutumba shall have the right to inspect the accounts of each fasli year at the kutumba house at any time in the months of August and September in the immediately succeeding fasli year, and also to take copies of, or extracts from, such accounts :

Provided that nothing contained in this sub-section shall apply to any kutumba, the gross income of which from all sources, in any one year, does not exceed three thousand rupees.

(2) If the accounts are not made available for inspection as provided for in sub-section (1), the Civil Court of the lowest grade having original jurisdiction over the place where the whole or any part of the immovable property of the kutumba is situated or where the yajaman resides may, on

application by any major member of the kutumba and after notice to the yajaman, pass an order causing the accounts to be produced in Court and allowing such member to inspect and also to take copies of, or extracts from, such accounts.

(3) Whoever knowingly disobeys an order of the Court under sub-section (2) shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both :

Provided that no Court shall take cognizance of an offence punishable under this sub-section, except on the complaint in writing of the Court whose order has been disobeyed or of some other Court to which such Court is subordinate.

Validity of sales, mortgages with possession and leases.

29. (1) No sale of the immovable property of a kutumba, and no mortgage with possession or lease of such property for a period exceeding five years, shall bind the kutumba unless it is executed by the yajaman, for consideration, for kutumba necessity or benefit, and with the written consent of the majority of the major members of the kutumba.

(2) No mortgage with possession, and no lease for a premium returnable wholly or in part, of any kutumba property for a period not exceeding five years, shall bind the kutumba, unless the mortgage or lease is executed by the yajaman, for consideration, and for kutumba necessity or benefit.

(3) Nothing contained in this section shall be deemed to restrict the power of the yajaman to grant or renew, in the usual course of management, any lease without a premium returnable wholly or in part, for a period not exceeding five years.

Validity of mortgages without possession and debts.

30. No mortgage without possession of any kutumba property and no debt shall bind the kutumba unless the mortgage is executed, or the debt is contracted, by the yajaman and for kutumba necessity.

Maintenance of members of kutumba.

31. (1) Every member of a kutumba, whether residing in the kutumba house or not, shall be entitled to separate maintenance consistent with the income and circumstances of the kutumba and with due regard to the reasonable wants of such member.

Explanation.—The share that a member of a kutumba would be entitled to, on a partition under this Act, shall not be the criterion in determining the maintenance payable to him.

(2) The maintenance payable to a member of a kutumba shall be paid only out of the income realized from the kutumba properties and shall be a charge on such income.

(3) After this Act comes into force, no suit shall lie for arrears of maintenance for a period exceeding two years.

application by any major member of the kutumba and after notice to the yajaman, pass an order causing the accounts to be produced in Court and allowing such member to inspect and also to take copies of, or extracts from, such accounts.

(3) Whoever knowingly disobeys an order of the Court under sub-section (2) shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both :

Provided that no Court shall take cognizance of an offence punishable under this sub-section, except on the complaint in writing of the Court whose order has been disobeyed or of some other Court to which such Court is subordinate.

Validity of sales, mortgages with possession and leases.

29. (1) No sale of the immovable property of a kutumba, and no mortgage with possession or lease of such property for a period exceeding five years, shall bind the kutumba unless it is executed by the yajaman, for consideration, for kutumba necessity or benefit, and with the written consent of the majority of the major members of the kutumba.

(2) No mortgage with possession, and no lease for a premium returnable wholly or in part, of any kutumba property for a period not exceeding five years, shall bind the kutumba, unless the mortgage or lease is executed by the yajaman, for consideration, and for kutumba necessity or benefit.

(3) Nothing contained in this section shall be deemed to restrict the power of the yajaman to grant or renew, in the usual course of management, any lease without a premium returnable wholly or in part, for a period not exceeding five years.

Validity of mortgages without possession and debts.

30. No mortgage without possession of any kutumba property and no debt shall bind the kutumba unless the mortgage is executed, or the debt is contracted, by the yajaman and for kutumba necessity.

Maintenance of members of kutumba.

31. (1) Every member of a kutumba, whether residing in the kutumba house or not, shall be entitled to separate maintenance consistent with the income and circumstances of the kutumba and with due regard to the reasonable wants of such member.

Explanation.—The share that a member of a kutumba would be entitled to, on a partition under this Act, shall not be the criterion in determining the maintenance payable to him.

(2) The maintenance payable to a member of a kutumba shall be paid only out of the income realized from the kutumba properties and shall be a charge on such income.

(3) After this Act comes into force, no suit shall lie for arrears of maintenance for a period exceeding two years.

32. (1) Any member of a kutumba may institute a suit in a Civil Court for the removal of the yajaman— Right to remove yajaman by suit.

(i) for any malfeasance, misfeasance, breach of trust or neglect of duty in respect of the kutumba ; or

(ii) for any misappropriation or improper dealing with the income or the properties of the kutumba ; or

(iii) for unsoundness of mind or any physical or mental infirmity which unfits him for discharging the functions of a yajaman ; or

(iv) for any other sufficient cause which, in the opinion of the Court, makes his continuance as yajaman injurious to the interests of the kutumba.

(2) A Court trying a suit under sub-section (1) may, if it considers that it is not necessary to direct the removal of the yajaman, pass such orders as it thinks fit having regard to the welfare of the kutumba and the circumstances of the case.

33. Any yajaman may, by a registered document, give up his right of management. Relinquishment of right of management by yajaman.

34. The provisions of this Chapter shall apply to every kavaru possessing separate properties as if it were a kutumba. Application of Chapter to kavarus.

CHAPTER VI.

Partition.

35. (1) Any kavaru represented by the majority of its major members may claim to take its share of all the properties of the kutumba over which the kutumba has power of disposal and separate from the kutumba : Right of kavaru to claim partition.

Provided that—

(i) where a kavaru consists of only two persons, such a claim may be made by either of them ;

(ii) no kavaru shall make such a claim during the life-time of any ancestress common to such kavaru and to any other kavaru or kavarus of the kutumba, who has not completed fifty years of age, unless—

(*a*) she has signified her consent in writing, or

(*b*) two-thirds of the major members of the kavaru join in making the claim for partition ;

(iii) the common ancestress may on her own volition claim a partition.

(2) The share obtained by the kavaru shall be taken by it with all the incidents of kutumba property.

Explanation.—For the purposes of this Chapter—

(*a*) a male member of a kutumba, or a female member thereof who has no living descendant in the female line, shall be deemed to be a kavaru if he or she has no living female ascendant who is a member of the kutumba ;

(*b*) such male member, or such female member if she has completed the age of fifty years, shall be deemed to be a nissanthathi kavaru.

Ascertainment of shares at partition.

36. (1) Any kavaru entitled to partition under section 35 shall be allotted a share of the kutumba properties in accordance with the provisions of sub-section (2).

(2) (*a*) If on the date on which a partition is claimed, any of the members of the kutumba who are nearest in degree to their common ancestress is removed four degrees or more from such ancestress, then, the division shall be effected in the following manner :—

(i) In three-fourths of the kutumba properties, the kavaru shall be allotted such share as would fall to it, if a division thereof were made *per capita* among all the members of the kutumba then living.

(ii) In the other one-fourth of the kutumba properties, the kavaru shall be allotted such share as would fall to it, if a division thereof were made among the kavarus *per stirpes*.

(*b*) In other cases, the division shall be effected in the following manner :—

(i) In one-half of the kutumba properties, the kavaru shall be allotted such share as would fall to it if a division thereof were made *per capita* among all the members of the kutumba then living.

(ii) In the other half of the kutumba properties, the kavaru shall be allotted such share as would fall to it if a division thereof were made *per stirpes* among the kavarus.

(*c*) In a stirpital division under clause (*a*) (ii) or (*b*) (ii), the common ancestress if alive shall be entitled to the same share as a child of hers.

(*d*) Where the kavaru seeking a partition is not a main kavaru of the kutumba, the share of the main kavaru shall first be ascertained in accordance with the provisions of the foregoing clauses, and the share so ascertained shall thereafter be divided and subdivided according to the provisions of clause (*b*) until the kavaru seeking partition is reached.

(*e*) The provisions of clauses (*a*) to (*d*) shall apply only to partitions claimed before the expiry of a period of fifteen years from the commencement of this Act.

(*f*) In a partition of a kutumba claimed after the expiry of the period aforesaid, a kavaru shall be allotted such share as would fall to it if a division of the kutumba properties were made *per stirpes* among all the kavarus.

(*g*) In a partition under clause (*f*), where the kavaru seeking partition is not a main kavaru of the kutumba, the share of the main kavaru shall first be ascertained in accordance with that clause and the share so ascertained shall thereafter be divided and subdivided in the same manner until the kavaru seeking partition is reached.

(*h*) The share of a kavaru at a partition shall be ascertained as on the date on which it makes a claim for partition.

Explanation.—For the purposes of this sub-section, the date on which a partition is claimed shall be—

(*a*) where the claim is made by a suit for partition, the date of the institution of the suit (whether the suit is prosecuted or not); and

(*b*) where the claim is made otherwise than by a suit, the date on which such claim is made.

(3) If at the time of the partition, any kavaru taking a share is a nissanthathi kavaru, it shall have only a life interest in the properties allotted to it, if the kutumba from which it separates has at least one female member who has not completed the age of fifty years, or where the kutumba breaks up into a number of kavarus at the partition, if at least one of such kavarus is a santhathi kavaru and if there is no such female member or santhathi kavaru, the kavaru shall have an absolute interest in the properties allotted to it.

(4) In the case referred to in sub-section (3), the life interest of the nissanthathi kavaru in the properties allotted to it at the partition shall become absolute, if the kutumba concerned ceases to have among its members a female who has not completed the age of fifty years or if all the kavarus into which the kutumba broke up, whether at the same or at a subsequent partition, become nissanthathi kavarus.

(5) The properties allotted to a nissanthathi kavaru at a partition and in which it had only a life interest at the time of the death of the last of its members, shall devolve upon the kutumba, or where the kutumba has broken up, at the same or at a subsequent partition, into a number of kavarus, upon the nearest santhathi kavaru or kavarus.

(6) A registered family settlement (by whatever name called) or an award, to which all the major members of a kutumba are parties and under which the whole of the kutumba properties have been or were intended to be distributed, or purport to have been distributed, among all the kavarus of the kutumba for their separate and absolute enjoyment in perpetuity, shall be deemed to be a partition of the kutumba properties notwithstanding any terms to the contrary in such settlement or award.

Application of Chapter to kavarus.

37. The provisions of this Chapter shall apply to every kavaru possessing separate properties as if it were a kutumba.

CHAPTER VII.

Miscellaneous.

Rules.

38. (1) The Provincial Government may make rules consistent with this Act to carry into effect the purposes thereof.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all matters expressly required or allowed by this Act to be prescribed.

(3) All rules made under this section shall be published in the *Fort St. George Gazette* and on such publication shall have effect as if enacted in this Act.

Saving.

39. Nothing contained in this Act shall be deemed to affect any rule of Aliyasantana Law, custom or usage, except to the extent expressly laid down in this Act.

Home Department.

DRAFT MEMORANDUM FOR LEGISLATION.

BILL - The Madras Aliyasanthana Bill - Legislation relating to marria intestate succession, family management and partition, applicable to persons governed by the "Aliyasanthana Law of Inheritance - Proposals

- - - - - -

It has been suggested that it is expedient to define and amend in certain respects the law relating to marriage, intestate succession, family management and partition applicable to persons governed by the Aliyasanthana Law of Inheritance. It is stated that the exclusion of persons following Aliyasanthana Law of Inheritance from the operation of the Marumakkattayam Bill in 1933 was due to the opposition of a section of the people to certain provisions in the chapters on Marriage and Partition and that since then, opinion in favour of such legislation has gathered strength in the South Kanara District. In January 1947, the Hon'ble Minister for Public Health gave notice of his intention to introudce as a non-official bill a draft prepared by a representative committee constituted by the Aliyasanthana People's Reform Conference. It is stated that the Bill has been drafted on the lines of the Marumakkattayam Act, with such modifications as may be necessary in order to make the Bill acceptable even to the conservative sections of the followers of the Aliyasanthana Law. Hon'ble Minister has since withdrawn his notice to introduce the Bill as a non-official Bill and it has been proposed to introduce it as a Government Bill.

2. Orders are solicited whether the legislation will be considered necessary in the matter; and if so, whether legislation will be undertaken on the lines indicated in the draft Bill at X.

3. The provisions in Chapters II, III, IV, etc., of the draft Bill fall within the scope of entries in the concurrent Legislative List and all the clauses in the Bill are intra vires the Provincial Legislature. Under Secretariat Instruction 32 (2) Hon'ble Minister (Home), Hon'ble Minister (Public Health) and His Excellency have agreed to legislation being undertaken on the lines indicated in paragraphs 1 and 2 above and to the Government of India being consulsted on the legislation proposed. A copy of the memorandum may now be circulated simultaneously to each of the other Ministers under Secretariat Instruction 32 (2) for orders whether the legislation will be undertaken as proposed and whether the Government of India will be consulsted on the legislation with reference to Secretariat Instruction 33-A.

J.W. PRITCHARD
Secretary to Government.

/True copy/

for Superintendent,
Madras Record Office, Egmore.

Sk.

4/3/8. 26 853

HOME DEPARTMENT.

The Madras Aliyasanthana Bill, 1948 has been passed by both the houses of the Legislature - vide pages 41 and 45 c.f. This may now be sent to the Legal Department for further action to obtain the assent of His Excellency the Governor.

xx/2.2.49

LEGAL DEPARTMENT.

The Madras Aliyasantha Bill, 1948 (L.C.Bill No. 1 of 1948) was published at pages 93 - 106 of Part IV.B of the Fort St. George Gazette dated the 26th April 1949, as Madras Act IX of 1949. The main file relating to the Act may be returned to Home Department as it is no longer required in this Department.

xx/2.5.1949

HOME DEPARTMENT.

Please see this Department's note and the note of the Legal Deptt. above. The Memo on p.47 may be perused. No further action is called for on this file. The file may be closed and the papers recorded as Ms. G.O. (A printed copy of the Act will be added to the file when received).

A copy of the printed Act should be added to the file.

A 2. When and by whom will the question of framing rules under the Act be taken up?

xx/17.5.

With reference to Asst.Secry's querry above, it is submitte that a printed copy of the Act has since been received from the Superintendent Government Press and added to this file. As regards "A" above, it is submitted that necessary extracts has been taken from this file and action is being taken separately to frame rules under this Act. The file may now be recorded as a Ms. G.O.

xx xx/10.9.49
Secretary to Govt.

G.O. (Ms) No. 4375 dated the 1st November 1949.

Abstract:

ACT ; The Madras Aliyasanthanam Act - Act IX of 1949 - Legislation Peprs - Recorded.
Papers

/True copy/

Sk.

for Superintendent,
Madras Record Office, Egmore.
26.8.53.